IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5900 OF 2005

Mohan Sitaram Andhere Petitioner

versus

Anil K. Mumbaikar & ors. Respondents

Dr.V.K.Choudhary for petitioner.

Shri Vijay Patil, AGP for respondents 1 and 2.

Shri A.H.Palekar, AGP for respondents, 3,6,7 & 8.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 17th February 2006

PC :

1. Heard Dr.Choudhary for the petitioner and Shri Patil for respondents 1 and 2. Learned AGP appears for respondents 3, 6, 7 and 8.

2. This petition under Articles 226 and 227 of the Constitution of India challenges an order passed by the Minister of Co-operative, Government of Maharashtra in Revision Application No.80 of 2005.

3. This revision application was preferred by the petitioner to challenge an order dated 14th October 2004 passed by Divisional Joint Registrar, Co-operative Societies, Konkan Division, Navi Mumbai in Appeal Nos.2/2004 and 3/2004.

4. These appeals were preferred by respondents 3 and 4 to challenge order dated 12th February 2004 which was passed by the District Deputy Registrar, Co-operative Societies, Thane under section 78(1) of the Maharashtra Co-operative Societies Act, 1960 ("MCS Act").

5. A show cause notice was issued to respondents 1 and 2 calling upon them to show cause as to why action under the aforesaid provision should not be initiated against them. These persons are Committee Members of Thane Zilla Majoor Kamgar Sahakari Sansthancha Sangh Maryadit.

6. The appellate authority as well as revisional authority have concurrently found that the action u/s 78(1) of MCS Act being an extreme and drastic step, before resorting to the same, it is necessary that compliance is made with all pre-requisites which are set out in sub section 1

of section 78.

7. The contention of Shri Choudhary is that the order of District Deputy Registrar is set aside only because of absence of effective consultation with the Federal Society to which the society is affiliated.

8. Dr.Choudhary relies upon a decision of this Court reported in 1996(1)-Mh.L.J.-616.

9. From a perusal of the orders under challenge, it appears that need for effective and meaningful consultation with the federal society before passing an order of removal, is something which is not even disputed by the petitioners herein. Their case is that the notice was clear and the notice was forwarded to the federal society for its views and expressing its opinion on the proposed action of removal.

10. In the instant case a finding of fact is recorded that the allegations in the show cause notice u/s 78(1) having been expressly denied by respondents 1 and 2, it was necessary for the District Deputy Registrar to have forwarded their written statement/reply to the show cause notice

to the federal society and that alone would have made the exercise meaningful and complete. None disputes the fact that consultation is not an empty formality.

11. In the case relied upon by Dr.Choudhary this Court, on facts, expressed it’s opinion that the show cause notice contained the entire material which was required for the federal society for it’s opinion and it could not have insisted on other documents/materials being forwarded to it. It is in such factual backdrop that this Court held that no further material was necessary to be placed before the federal society and sufficient compliance with section 78(1) was made in the case before this Court.

12. In my view, it is not possible to express a different opinion or views when the authorities below concur that looking into the nature of the allegations levelled in the show cause notice, the reply thereto as also other material, was necessary to be forwarded to the Federal Society and that having not been done, there was no effective and meaningful consultation. In other words, in fact, the finding is that there was no consultation at all.

13. In my jurisdiction under Articles 226 and 227 of the Constitution of India, I cannot be called upon to reappraise and reappreciate the materials which led the authorities to record the above finding of fact. Moreso, when it is not demonstrated that the finding is vitiated by any error apparent or is perverse. Petition dismissed.

14. In the light of above, it is not possible for me to uphold the request of Dr.Choudhary that the matter should be remanded to the District Deputy Registrar. In my view, it would always be open for the District Deputy Registrar to initiate such steps as are permissible in law, if he is satisfied that the respondents 1 and 2 are disqualified from holding the post of Committee Members. All contentions on merits of both sides are expressly kept open.

(S.C.DHARMADHIKARI, J.)